

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 1 (CP2008-5)
Negotiated Service Agreement

Docket No. CP2009-50

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
FILING OF ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 1
NEGOTIATED SERVICE AGREEMENT
(July 27, 2009)

In response to Order No. 251¹, the Public Representative hereby comments on the July 16 Notice of United States Postal Service Filing of an additional Functionally Equivalent Global Expedited Package Services 1 (GEPS-1) Negotiated Service Agreement, a negotiated service agreement (NSA) with an individual mailer (Notice).

The Notice is persuasive. This NSA is consistent with the policies of 39 U.S.C. 3632, with regard to Action of the Governors; section 3622, Modern rate regulation; and section 3642, with regard to adding new products to the Mail Classification List (MCL), notice and publication. Furthermore, each pertinent element of 39 USC 3633(a) appears to be met by this GEPS contract.

¹ Commission Order 251, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreement, July 17, 2009.

For a competitive products pricing schedule *not of general applicability*,² the Postal Service must demonstrate that the contract will be in compliance with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs).

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not redacted) version. Discussion of the salient issues follows.

Accountability and Confidentiality

The Postal Service Notice contains a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.³ Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal.

The Postal Accountability and Enhancement Act of 2006 (P.L. 109-435), ("PAEA") provided the Commission with expanded oversight powers and set in place a regulatory framework for increased transparency and accountability. Ultimately, the Commission

² See 39 CFR 3015.5.

³ Postal Service Notice, at 2-3.

shall be the arbiter of what information, in matters before it, shall be under seal or made public.⁴ PAEA would also appear to suggest that the general public not only be a party to these proceedings, but have assurance that any and all NSAs proposed by the Postal Service meet the requirements of the law.(39 U.S.C. 505)

The Postal Service's Notice and supporting data (as filed, under seal) indicate that the proposed CP2009-50 contract is appropriately categorized as a Competitive Product, and is functionally equivalent to the other contracts within the GEPS 1 (CP2008-5) shell classification.

Pricing, Cost Coverage and Contribution

First, the Public Representative notes that the Postal Service Notice proposed a revision to the MCS, referring to the appropriate Governors' Decision (No. 08-7) regarding Docket No. CP2008-5, filed July 23, 2008. The Commission, in Order No. 86 ("Concerning Global Expedited Package Services Contracts") -- Docket No. CP2008-5 -- July 23, 2008, and prior Order 78 ("Notice and Concerning Prices Under Global Expedited Package Services [NSAs]") acknowledges the possibility of grouping functionally equivalent agreements as a single product if they meet requirements of 39 USC 3633, and exhibit similar cost and market characteristics. It is notable that the customer for the instant contract is the customer for CP2008-5; the contract in Docket CP2009-50 is a renewal of that one-year agreement. It may be inferred, therefore, that the NSA was beneficial to both parties, and that both parties have agreed to an NSA

⁴ 39 U.S.C. 504(g)(3)(A).

that sets out essentially the same conditions. The instant contract has updated pricing to reflect appropriate increases in costs, yet it still comports with the pricing shell in Governors' Decision 08-7.

***f* ~ (Functional Equivalency)⁵**

The Postal Service presents the instant contract as *f* ~ to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008-5. As noted, *supra*, in Order No. 86 (establishing GEPS 1 as a product) the Commission held that additional contracts may be included as part of the GEPS 1 product provided they meet the requirements of 39 U.S.C. 3633 and *if* they are *f* ~ to the initial GEPS 1 contract filed in Docket No. CP2008-5.⁶

The Notice proposes that the instant contract fully comports with materials filed in accordance with 39 CFR § 3015.5, under the Rules of Practice and Procedure regarding requests to modify the product lists within the Mail Classification Schedule. Specifically, this GEPS 1 NSA meets the description of services provided in the Postal Service's Attachment A in Docket CP2008-5, and falls between the price floor and

⁵ For convenience, the Public Representative suggests a combination of the mathematical representation of "function" – a lowercase, italicized "*f*"; combined with a tilde, used in mathematics to denote an equivalence relation (quite different than "equal to") to abbreviate the terms "functional equivalent," "functionally equivalent," and "functional equivalency".

⁶ See Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86); See *also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors' Decision No. 08-7), May 6, 2008, and Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, July 23, 2008.

ceiling formulae proposed in Attachment B to the Governors' Decision No. 08-7.⁷

Because this contract does fall within these parameters and pricing guidelines, it would appear to be an *f* ~ GEPS agreement.

These contracts provide incentives for using Express Mail International and Priority Mail International. Preparation requirements include using USPS-supplied labeling software (or a software that has the same functionality as the USPS-supplied labeling software). The software allows for preparation of address labels and Customs declarations and submission of electronic shipment information to the Postal Service, as well as prepayment of Customs duties and taxes and pre-advice for foreign Customs authorities by the Postal Service. Most importantly, for a mailer to qualify, the contract must cover its attributable costs. In these functions, it would appear that this GEPS 1 agreement complies with the template proposed in Docket No. CP2008-5. In other words, this agreement appears to be *f* ~ to the contract the Commission approved in that docket, the seminal GEPS 1 classification determination.

Conclusion

The Public Representative acknowledges that the pricing in the present GEPS 1 contract comports with provisions of title 39. This contract appears to be able to generate sufficient revenue to cover its attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁸ In addition to having the mailer prepare mailings for

⁷ *Op. cit.*

⁸ 39 C.F.R. § 3015.7(c).

less costly handling by the Postal Service, the contract employs pricing incentives based upon volumes and other provisions favorable to both the Postal Service and the public.

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

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